



Department
Of
Economic and Community Development
59 Statehouse Station
Augusta, Maine 04333

POLICY STATEMENT #5

Subject: ***CDBG Activities in Flood Zones and Executive Order 11988***

Revised: **04/03**

Introduction

All Community Development Block Grant (CDBG) recipients must comply with federal Executive Order (EO) 11988 (Floodplain Management) and Sections 102 and 202 of the Flood Disaster Protection Act. This Policy Statement shows what has to be done when a CDBG project is located in a floodplain.

Terminology You Should Know

Flood: Temporary condition of inundation of normally dry land areas due to unusual overflow of inland or tidal waters or unusual accumulation or runoff of surface waters.

Floodplain: Any land area susceptible to being flooded. A 100-year floodplain has at least a 1% chance of flooding in any year; a 500-year floodplain has a .2% chance of flooding in any year.

SFHA (Special Flood Hazard Area): shows the area inundated in a 100-year flood. A coastal high hazard area is a 100-year floodplain with additional hazards due to wind and rain action.

Floodway: Includes a river channel or water course and the adjacent land area that during a flood has the greatest depth, velocity, and highest hazard within the floodplain.

Flood Maps: Both a **FHBM** (Flood Hazard Boundary Map) and a **FIRM** (Flood Insurance Rate Map) show 100-year flood areas, including coastal high hazard 100-year areas. Some FIRMs also show 500-year flood areas and base flood elevations; a few show floodway boundaries.

NFIP (National Flood Insurance Program): Federal program enabling property owners in participating communities to purchase flood insurance. Participant communities must adopt and enforce a floodplain management ordinance to reduce future flood risks in SFHAs.

Flood Hazard Development Permit: Proposed projects in floodplains may be allowed. One requirement is a local permit. Communities in the NFIP administer a permit system to prevent increased flood damage from development and redevelopment.

EO 11988: This Executive Order specifies the 8-step process that must be completed before CDBG – funded projects may be allowed in a floodplain. CDBG regulations (24 CFR Part 55) and relevant sections from other Parts are attached.

Critical Actions: An activity for which even a low chance of flooding is too great a risk in terms of loss of life, injury, or damage to property. Critical actions include maintenance or extension of useful life of facilities such as hospitals, nursing homes, emergency operations centers, and places that produce, use or store water-reactive materials, etc. **CRITICAL ACTIONS CANNOT BE APPROVED IN FLOODWAYS OR COASTAL HIGH HAZARD AREAS. Critical actions in 100 and 500-year floodplains always require a full review under EO 11988.**

Functionally Dependent Use: A land use that must be in proximity to water in order to perform its intended function, such as a marina, port facility, water-front park, dam, many types of bridges. Long-term storage or related manufacturing facilities are not functionally dependent uses. **Functionally dependent uses always require a full review under EO 11988.**

When should a community perform an EO 11988 Review?

Your community must find out first if your proposed project is located in any floodplain. To find out, locate your project on a Flood Insurance Rate Map (FIRM) or Flood Hazard Boundary Map (FHBM) at your town office. Your local Code Enforcement Officer can help you find the maps and locate your project on them. In addition, you must consult with community officials to see if your project site is susceptible to being flooded or has a history of flooding. Remember, it is the community's responsibility to determine if your project is located in a floodplain.

If you determine your project is not in a SFHA or any other floodplain, **there are no additional requirements under EO 11988 and a Flood Hazard Development Permit is not required.** Contact the Maine Floodplain Management Program in the State Planning Office (SPO) if you and your Code Enforcement Officer have questions regarding floodplain boundaries and definitions.

Exempt activities in HUD's Environmental Review Regulations (24 CFR 58) and a minor change to a previously-approved project with no additional adverse impacts on a floodplain are not subject to EO 11988. If any activities are part of a larger project subject to an EO 11988 review, contact the Office of Community Development (OCD) for guidance. Other exemptions from an EO 11988 review for actions in floodplains are listed on page 15.

What if my project IS located in a Floodplain?

If you determine your project is in a SFHA or any other floodplain, you must identify how your project will meet requirements and allow time to complete EO 11988 and Flood Hazard Development Permit procedures. The best immediate action is to request technical assistance from the Floodplain Management Program and alert your Project Development Specialist. The time required to do EO 11988 and Flood Hazard Development Permit tasks makes your environmental review process longer.

If a functionally dependent use, floodway, or coastal high hazard area are issues in your project, you must alert your Project Development Specialist (PDS) in OCD and the Maine Floodplain Management Program in SPO. If your activities are eligible, you should discuss your schedule to complete the EO 11988 8-step process and Flood Hazard Development Permit procedures with your PDS.

An EO 11988 review is required when:

- ✓ **critical actions** are proposed in 100 or 500 year floodplains;
- ✓ **functionally dependent uses** are proposed in floodways, coastal high hazard areas, or 100 year floodplains; and
- ✓ **any of the following are proposed in a SFHA or non-critical actions are proposed in a coastal high hazard area:**
 - acquisition
 - construction (i.e., new construction, infrastructure extensions)
 - disposition
 - **substantial improvement**
 - non-residential **minor improvement**
 - residential **minor improvement** in 5 or more units
 - financial assistance (assess what is being financed)
 - lease, rent, occupy, etc., properties

Substantial improvement means repair, reconstruction, modernization, or improvement that:

- 1) costs more than 50 percent of the market value of the structure prior to improvement or
- 2) increases the number of dwelling units or average peak number of customers and employees likely on-site at any one time by 20 percent or more.

Minor improvements are repair, reconstruction, modernization, or improvement actions on one to four family properties that do not qualify as substantial improvement.

Are there any exceptions?

Two exclusions to the “substantial improvement” standard exist. One is for actions necessary to assure safe living conditions in a structure when these actions are the only ones taken. Compliance with Life Safety Code violations is an example of assuring safe living conditions. The second is alteration of a structure on the National Register of Historical Places or on a State Inventory of Historic Places. A variance from the Board of Appeals must be issued as well as complying with State Historic Preservation Officer requirements.

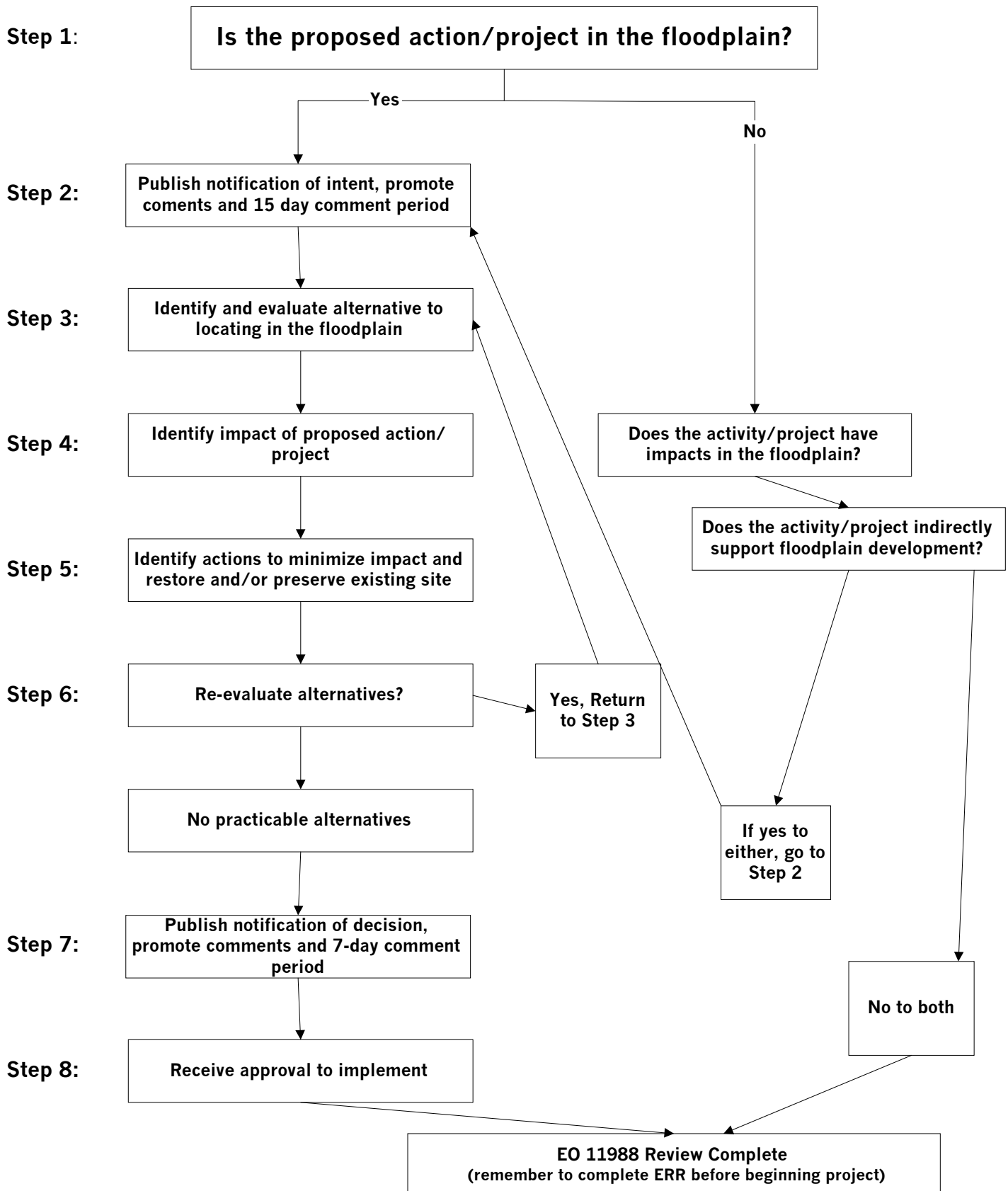
A full review is not required when only an incidental portion of the land area is in the floodplain, no action, not even landscaping, will occur in the floodplain, and three conditions are met. These conditions, designed to preserve the floodplain, are:

- 1. no actions will directly or indirectly impact the floodplain;**
- 2. provisions are made for site drainage;**
- 3. a covenant or comparable restriction is placed on use of the property.**

Requirements of an EO 11988 Review – An Overview

This presidential Executive Order calls for public review and comment on any proposed project located in a floodplain. This is **above and beyond what is required for a CDBG project not in a floodplain**. The eight steps in the process are shown in the following “Decision Tree for EO 11988 Process”. A narrative of the eight steps is attached.

Decision Tree for Executive Order 11988 Reviews



SUMMARY OF EO 11988 Process

STEP 1 – Is the proposed project located in a floodplain?

STEP 2 is the first formal and public review opportunity in the process. This 15-day comment period can fit into your local citizen participation, planning, or Phase II review or process. A notice is to be published that includes:

- name of the project/activity, map of proposed location, description of the activity
- why is it proposed to locate in the floodplain
- total number of acres of floodplain involved
- local official and phone number to contact for information and
- location of office and hours available of full description/documentation on the project

A separate public hearing is not required. Presenting the EO 11988 process and requirements during your CDBG Phase II Public Hearing is recommended.

STEPS 3 through 5 call for identification and evaluation of:

- practicable alternatives to the proposal [see 24 CFR 55.27(a)(1) for documentation requirements];
- direct and indirect potential impacts of alternatives (including the original proposal);
- mitigation measures that would minimize impacts from the proposal/alternatives [see 24 CFR 55.27(a)(2)].

STEP 6 requires reevaluation of all alternatives. Documentation of “no practicable alternative” to the project must be developed and prepared for submission prior to proceeding to Step 7.

STEP 7 is the Public Notification of Decision of “no practicable alternative” to the proposal. This is the second published notice in the process; the comment period is for seven days; the notice to be published includes:

- name of the project/activity, map of proposed location, and reference to earlier notice
- reasons why the proposal must locate in the floodplain and list of alternatives considered
- mitigation measures to be taken to minimize impacts
- local official, office, and phone number to contact for information and
- location and hours available of full description/documentation on the project

Compliance with FEMA elevation and construction requirements is necessary for actions approved in floodplains. These are in the Floodplain Management ordinances of communities participating in the NFIP and in 44 CFR 60.3 for non-participating communities. For approved actions in coastal high hazard areas, please see 24 CFR 55.1(c)(3). Other requirements include Notification of floodplain hazard (24 CFR 55.21), Conveyance restrictions for the disposition of real property (24 CFR 55.22), and Construction requirements (24 CFR 200.926d (4)).

STEP 8 is to implement the project. The environmental review process and other permit processes, including a Flood Hazard Development Permit, must be processed before implementation can be approved.

What do I do with the EO 11988 Review when it's complete?

EO 11988 documentation is part of your community's Environmental Review Record (ERR). EO 11988 documentation sent to OCD includes both published notices (with maps), an explanation of "No Practicable Alternative", report on comments received, and how comments were resolved. These documents are the back up for conclusions on your checklists. Your EO 11988 completion predates your ERR completion. Your local floodplain ordinance must be in compliance with the State's floodplain management requirements.

Do I need a Flood Hazard Development Permit?

In addition to the EO 11988 process, all projects using CDBG funds for construction or acquisition in a SFHA must either acquire a local Flood Hazard Development Permit or document through the local floodplain management system that a permit is not required. Your Code Enforcement Officer is a first step in your effort to comply with requirements and to complete the permitting process. Final steps include notification of the Maine Flood Insurance Coordinator if CDBG funded actions will occur in floodplains and notification to DECD through an ERR submission that the permit process is complete.

Definitions of development and substantial improvement are included in local floodplain ordinances.

Local floodplain ordinances must abide by the following definitions:

Development means any change caused by individuals or entities to improved or unimproved real estate, including but not limited to the construction of buildings or other structures; the construction of additions or substantial improvements to buildings or other structures; mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials; and the storage, deposition, or extraction of materials, public or private sewage disposal systems or water supply facilities.

Substantial Improvement means any reconstruction, rehabilitation, addition, or other improvement to a structure with a cost of 50 percent or more of the market value of the structure prior to construction. This includes structures which have incurred substantial damage. Not included are: (a) improvement to correct existing violations of state or local health, sanitary, or safety codes that are identified by the local code enforcement officer to be the minimum necessary to assure safe living conditions; or (b) alteration of an historic structure only if it will not preclude the structure's continued designation as an historic structure, and a variance is obtained from the community's Board of Appeals."

Actions in a SFHA cannot be considered without meeting the following:

- accomplish the work in the drier summer months and in the shortest possible time;
- gather all materials, equipment, and supplies and store them outside the floodplain;
- follow sound erosion and soil stabilization practices during construction and restore the site to its original contour; and
- review project actions in light of Floodplain Management Ordinance requirements and compliance with State Model Floodplain Ordinance.

Where can I get more information ?

Questions regarding NFIP standards, State Model Ordinance, floodplain boundaries, and Further Advice on EO 11988 may be addressed to the Maine Floodplain Management Program in the State Planning Office. Attached are the HUD regulations on Implementation of Executive Order 11988 (24

CFR Part 55 with portions of Parts 50 and 200). Questions regarding completion of the EO 11988 process may be addressed to OCD.

Floodplain management information and technical assistance is available through the Local Code Enforcement Officer and the Maine Floodplain Management Program. Contact the State program through the State Planning Office, 184 State Street, 38 State House Station, Augusta, Maine 04333-0038 or call (207) 287-8050. For information on review and publication requirements of EO 11988, contact the Office of Community Development, 59 State House Station, Augusta, Maine 04333-0059 or call (207) 287-8485.

SAMPLE NOTICE (for Step No. 2)

NOTICE OF A PROPOSED DEVELOPMENT IN THE FLOODPLAIN

The (name of the unit of local government) is requesting financial assistance under the Community Development Block Grant (name of specific program) for a project known as (name of project).

If implemented, the proposal will (describe project and include purpose, numbers, linear feet, location, impact are, etc., as appropriate). The purpose of this notice is to inform the public that the proposed project is located in, or impacts, a floodplain. The (name of the unit of local government) is conducting a floodplain impact evaluation to determine if there is a practicable alternative to this proposed development by considering alternate sites, alternative actions, potential mitigation to minimize impacts, and restoration or preservation of the site.

Information on the proposal is available for review on (give days, hours, office location, telephone number) from (name of contact person). Any person may comment on the proposal by sending comments to (name and address of unit of local government) within 15 days of this publication (or give final date for receipt of comments).

(attach location map with floodplain delineated)

SAMPLE NOTICE (for Step No. 7)

NOTICE OF DECISION OF “NO PRACTICABLE ALTERNATIVE” TO PROPOSED DEVELOPMENT IN THE FLOODPLAIN

The (name of the unit of local government) published on (date of newspaper notice) in this same newspaper a NOTICE OF A PROPOSED DEVELOPMENT IN A FLOODPLAIN on (name and brief description of the project).

The (name of the unit of local government) has completed a floodplain impact evaluation and it is available for review on (give days, hours, office location, telephone number). This review included consideration of project impacts, site mitigation, restoration or preservation, alternative actions and alternate sites. Specific alternatives considered were (identify alternate sites, alternative actions, mitigations, etc., as appropriate). (If mitigation, restoration, or preservation actions are required, summarize them). The (name of the unit of local government) concludes no practicable alternative exists to the proposal.

Comments may be sent to (name and address of unit of local government) within 7 days of this publication (or give final date for receipt of comments). If no comments are received, the (name of the unit of local government) will conduct an environmental review on the project as described.

(attach location map with floodplain delineated)